



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 569**

**IN THE MATTER
OF
J. MARTIN AUTY**

DISPOSITION AGREEMENT

The State Ethics Commission ("the Commission") and J. Martin Auty ("Auty") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 21, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry in-to possible violations of the conflict of interest law, G.L. c. 268A, by Auty. The Commission has concluded its inquiry and on April 8, 1998, found reasonable cause to believe that Auty violated G.L. c. 268A.

The Commission and Auty now agree to the following findings of fact and conclusions of law:

1. At all relevant times, Auty was a police lieutenant in the town of Mendon. As such, he was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. In early 1994, the town of Mendon advertised for part-time dispatchers to serve the police and fire departments. The town planned to hire twelve dispatchers. Each dispatcher would work about 16 hours per week at \$7.00 an hour.
3. Auty was appointed to serve on the review committee for the dispatcher positions.
4. By early March 1994, the town received about 41 applications, including one from Auty's stepdaughter. The review committee, including Auty, narrowed the list of applicants to 32 qualified candidates, including Auty's stepdaughter. Auty did not review his stepdaughter's application, but he reviewed the applications of the others to narrow the field of candidates.
5. The review committee, including Auty, began interviewing the candidates on March 19, 1994. Auty's stepdaughter was among those interviewed. Auty participated in the interviews of candidates other than his stepdaughter. He remained in the room during her interview but did not ask any questions.
6. After the interviews, the review committee, including Auty, narrowed the pool to twelve final candidates, including Auty's stepdaughter, and began background checks.

7. On April 25, 1994, the Board of Selectmen appointed all twelve candidates, including Auty's stepdaughter. The board did not question Auty's participation at this time.

8. In early July 1994, the police department advertised for part-time reserve police officers. The town expected to hire about four to six officers to work about 16 hours per week at \$11.00 per hour.

9. The police department received about 38 applications, including one from Auty's stepdaughter.

10. Auty was again on the review committee for these positions.

11. The review committee, including Auty, screened out about twenty applicants, interviewed sixteen, narrowed the list to ten and eventually selected five finalists. Auty's stepdaughter was one of the five final candidates.

12. As before, Auty did not participate in interviewing his stepdaughter or reviewing her application, but he remained in the room during his stepdaughter's interview and participated in all other aspects of the process.

13. On March 20, 1995, the Board of Selectmen were given the names of the five finalists.

14. In September 1995, the Board of Selectmen interviewed the final candidates and appointed them as reserve police officers.

15. Section 19 of G.L. c. 268A, except as permitted by paragraph (b) of that section,^{1/} prohibits a municipal employee from participating^{2/} as such in a particular matter^{3/} in which, to his knowledge, he or his immediate family^{4/} has a financial interest.^{5/}

16. The determination of whom to appoint as a part-time dispatcher in 1994 was a particular matter.

17. Auty's stepdaughter, a member of his immediate family and a candidate for a position as a part-time dispatcher, had a financial interest in that particular matter.

18. Auty participated in that particular matter by screening the applications of and interviewing the candidates other than his stepdaughter. When he did so, he knew that his daughter had a financial interest in the particular matter.

19. The determination of whom to appoint as part-time reserve officer in 1995 was also a particular matter.

20. Auty's stepdaughter, a candidate for a position as a reserve officer, had a financial interest in that particular matter.

21. Auty participated in that particular matter by screening the applications of and interviewing the candidates other than his stepdaughter. When he did so, he knew that his stepdaughter had a financial interest in the particular matter.

22. Accordingly, by participating in particular matters in which, to his knowledge, his stepdaughter had financial interests, Auty violated §19.^{6/}

In view of the foregoing violations of G.L. c. 268A by Auty, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Auty:

- (1) that Auty pay to the Commission the sum of five hundred dollars (\$500.00) as a civil penalty for violating G.L. c. 268A, §19; and
- (2) that Auty waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 14, 1998

^{1/}None of the exceptions to §19 apply in this case.

^{2/}"Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{3/}"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{4/}"Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e). As his wife's child, Auty's stepdaughter is a member of Auty's immediate family.

^{5/}"Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. See *EC-COI-84-96*.

^{6/}In his defense, Auty states that while he knew he was participating in particular matters, he was under the mistaken impression that he could avoid a violation of §19 by withdrawing from direct participation regarding his stepdaughter. The Commission has stated, however, that even indirect involvement constitutes participation for the purposes of the conflict of interest law. Specifically, in *In re Howlett*, 1997 SEC 859, the Commission found that a town assessor violated §19 by participating in the interviews of candidates for a position as senior clerk, even though he had avoided any direct action on his daughter's application and interview, and did not vote on the final selection. See *also*

Commission Advisory No. 11, Nepotism, at 2 (“Personal and substantial participation involves *any* significant involvement in the hiring process”).